

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: #00-884
WITH RCW 42.17)	
)	REPORT OF INVESTIGATION
MUKILTEO SCHOOL DISTRICT)	
)	
Respondent.)	
_____)	

I.

BACKGROUND

- 1.1 On April 11, 2000, the Public Disclosure Commission received a complaint filed by George Annillo. The complaint alleged a violation of RCW 42.17.130 by employees of the Mukilteo School District. Specifically, the complaint alleged that Mukilteo School District promoted its bond and levy proposals using school employees, classroom time, and facilities. The Mukilteo School District (MSD) placed two propositions on the March 14, 2000 special election ballot: a maintenance and operations levy and a \$48 million improvement bond. Both propositions failed. MSD next placed both propositions on the May 16, 2000 special election ballot. Both propositions passed in May.

II.

SCOPE

- 2.1 Staff reviewed the complaint letter received April 11, 2000, as well as additional material submitted by the complainant on May 5 and May 8, 2000.
- 2.2 Staff reviewed the response received May 2, 2000 from G. Douglas Ferguson, attorney for the Mukilteo School District.

III.

LAW

3.1 RCW 42.17.130 states in part:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: . . .

IV.

FINDINGS

4.1 On April 11, 2000, the Public Disclosure Commission received a complaint from George Annillo alleging violation of RCW 42.17.130 by employees of the Mukilteo School District. **(Exhibit 1)** Annillo's complaint alleges a number of violations, including:

- a. the use of the Mukilteo Elementary newsletter to promote the District's levy and bond measures;
- b. District personnel frightening the students with "horror stories" about the failure of the levy and bond measures and promising students new equipment or facilities if the bond measure passes;
- c. distributing political advertising supporting the District's levy and bond measures in District facilities, such as Mariner High School's "Sports Store";
- d. a statement in the local newspaper by Nicole McGowan, co-chair of the citizens' committee promoting the levy and bond measures, "that [the committee would be] hitting school events with totally factual information pieces";
- e. promotional articles written by the District superintendent and president of the Mukilteo Education Association for publication in the local newspaper;
- f. Board members approving the publication and distribution of a Mid-Year Report which promoted the District's levy and bond measures;
- g. creating, at District expense, full-color posters for the 1998 District bond measure and then hanging them in District schools; and
- h. distributing a special communication from District Board president, Ron Woldeit.

- 4.2 The complainant, on May 5, 2000, submitted an additional flyer that he characterized as a special publication created and distributed by the Mukilteo School District which may have been done to persuade and campaign for the District's levy and bond measures. **(Exhibit 2)**
- 4.3 A final submission was received on May 8, 2000 from the complainant: a brochure entitled "What Will the May 16 Election Mean to Athletic Programs?" The brochure was created and distributed by the Mukilteo School District. **(Exhibit 3)**
- 4.4 A response was received on May 1, 2000 from G. Douglas Ferguson, attorney for the Mukilteo School District. **(Exhibit 4)** The response addressed each of the complainant's allegations as follows [for ease of reference, the response corresponds to the allegation labeled with the same letter in Finding 4.1]:
- a. "The notice does not urge voters to vote one way or another but simply to register and get out and vote. It provides factual information regarding a prior levy that failed and does nothing more than urge people to be good citizens by electing to exercise their right to vote.
 - b. It would be difficult to prove that these statements were indeed made; however, if they were, the statements were factually presented information about the District's financial status.
 - c. The District created and distributed a straightforward two-page informational piece about the importance of the levy, relating to the uses of the funds provided by the maintenance and operation levy, and the information related to the District's needs and the potential consequences of the levy failure on operations and maintenance.
 - d. Nicole McGowan is not a District employee, director or official.
 - e. The District superintendent, Gary Toothaker, was asked by the *Beacon*, Mukilteo's local newspaper, to write guest editorials. The editorial submitted by Superintendent Toothaker which the complainant referenced was not promotional, however the *Beacon* staff, without the knowledge of Superintendent Toothaker entitled the editorial "School Bonds and Levy are Much Needed." The president of the Mukilteo Education Association (hereafter MEA) is on leave. In any event, the letter to the editor written by the MEA president was composed on her own time.
 - f. The mid-year report was printed in January 2000. The Mukilteo School Board elected to approve publishing a mid-year report after a previous periodical communication, *The Lighthouse*, was discontinued.
 - g. The posters were informational.
 - h. The Woldeit communication was an "informational letter related to the failure of the March levy and informing people about the impact on operations and maintenance should the resubmitted levy in May fail."

Additionally, the response asserted that all of the pieces produced and/or distributed by the Mukilteo School District and referenced in the complaint relayed "factual

information to voters about the needs of the School District to enable them to cast a more knowing and intelligent vote.” The response further asserted that none of the pieces “urge[d] people to vote one way or another.”

- 4.5 The Mukilteo School District (MSD) placed two propositions on the March 14, 2000 special election ballot: a maintenance and operations levy renewal and a \$48 million improvement bond. Both propositions failed. MSD next placed both propositions on the May 16, 2000 special election ballot. Both propositions passed in May. The Board directed the MSD management team to publicize the issues. The District’s informational activities included press releases to the media, printed flyers to the community, and postings on the District website. **(Exhibit 5, October 24 interview - Toothaker, p. 5)**
- 4.6 The final election results for the March election were certified on March 23, 2000. Approximately one week later on March 31, the Mukilteo Elementary Newsletter included the following notice:

VOTE! VOTE! VOTE! The election campaign for the May 16 levy is under way! The levy failed by only 35 votes. The bond needed an additional 400 votes. We will work hard to gather registered voters by April 14. Please stop by and fill out a voter registration form (easy to do). If you are already registered, come and sign up for an absentee ballot. REMEMBER – EVERY VOTE COUNTS!

The same notice appeared one week later in the April 7 newsletter. **(Exhibit 6)** The Mukilteo Elementary Newsletter is produced weekly by the Mukilteo Elementary School and carried home by its students. The inclusion in school newsletters of reminders to register and/or vote is characterized in the response as informational and a method of instilling civic virtue. The response provided several newsletters from different schools within the District all of which included election day reminders or notices about registering to vote. The newsletters were provided as proof that MSD’s normal and regular practice is to include election day reminders in school newsletters. The message in the Mukilteo Elementary newsletter is different, however, in that it makes a plea for people to register to vote after telling them how many more votes were required to pass MSD’s ballot measures. Wendee Steele, principal of Mukilteo Elementary, was responsible for the contents and distribution of the school newsletter. **(Exhibit 5, October 24 interview - Steele, p. 19-21)**

- 4.7 MSD published and distributed a mid-year report during the first quarter of 2000. **(Exhibit 1, pp. 9-16)** The complainant, a member of the Mukilteo School Board from January 1995 through December 1999, alleged that the MSD had never published a mid-year report during his tenure and that the 2000 report was published as a means of supporting the March ballot measures. MSD’s response characterized the Mid-Year Report as a publication that the school board approved to replace *The Lighthouse*, a discontinued MSD periodical. Minutes from the September 27, 1999 Board meeting were submitted in support of MSD’s response. **(Exhibit 9)** The

proposal before the Board was for the District to produce a semi-annual publication similar to the annual report that would be written by students and mailed, at District expense, to residents of the District. However, the original proposal discussed by the Board at its September 27 meeting evolved into an “exchange program” between student reporters contributing to the Kamiak and Mariner High School newspapers. MSD produced a one-time only mid-year report which reported District news, but primarily focused on the March levy and bond. **(Exhibit 13, Muntz interview, Jan. 3, 2001)** MSD spent approximately \$12,067.09 to publish and distribute the mid-year report. **(Exhibit 7)**

- 4.8 The MSD Board met on March 27, four days after the March election was certified. Following is an excerpt from the minutes of the Board’s March 27, 2000 meeting:

*Mr. Laverty spoke about the Citizen’s Team efforts. Mrs. Schwab noted that members of the Citizen’s Team were meeting the next day with parent and administrative representatives from each school site. They would talk about registering voters and identifying a solid core of ‘yes’ voters. . . . This will be a more expensive campaign and Board will need to be out supporting the issues in any way possible.” (Emphasis added.) **(Exhibit 9)***

Later that week, MSD Board president, Ron Woldeit, sent a letter to the parents notifying them of MSD’s reduced education plan including reduction in force measures. The response characterizes Woldeit’s March 31 letter as “an informational letter related to the failure of the March levy and informing people about the impact on operations and maintenance should the resubmitted levy in May fail.” The scheduled Board meeting and public information forums where the reduced education plan and RIF notices would be discussed appeared on the second page of the Woldeit letter. The letter opened with

Several weeks ago, measures were placed before voters in the Mukilteo School District to renew a local levy that expires at the end of this year and to finance a number of improvements to our schools. Both proposals failed. The levy proposal was only 35 votes short of reaching the 60-percent super majority required by state law.

The Board of Education has decided to place both measures on the ballot again on Tuesday, May 16. A Citizens Team is already working on the promotional campaign. In the meantime, during the next month or so, you’re likely to hear many rumors about program cuts and staff layoffs at your child’s school.

...

If the levy issue fails a second time on May 16, those local levy funds will go away at the end of this year. Because of that possibility, the management of the school district has already started to consider some severe program cuts. Also, because

of the levy proposal's failure earlier this month, the school district will be forced to issue RIF (Reduction in Force) Notices to many staff members in early May.

. . . Of course, if the levy passes on May 16, those RIF Notices will be rescinded.

At this point we do not know how many employees would receive RIF Notices or what programs would be cut in the event of a levy failure on May 16. I can tell you that the cuts would be substantial . . . (Exhibit 1, pp. 18-19)

MSD spent approximately \$1,861.67 to distribute the March 31 letter. **(Exhibit 7)**

4.9 The MSD Board delegated authority to produce and distribute information regarding the ballot measures to Andy Muntz, Manager of Communications and Public Relations. Muntz produced more than five flyers to advertise the ballot measures. These flyers were done in addition to the mid-year report and the March 31 Woldeit letter. **(Exhibit 5, October 24 interview - Muntz, p. 7)** Deputy Superintendent Fred Poss and Superintendent Gary Toothaker reviewed the flyers before they were distributed. The flyers were left in public areas of Mukilteo schools and available at public meetings conducted by MSD. **(Exhibit 5, October 24 interview - Toothaker, p. 5-6)** The complainant alleged that one of the flyers had been found at the "sports store" at Mariner High School. The "sports store" is the concession area operated by the Athletic Booster and Band Booster clubs. MSD allows the booster clubs to sell T-shirts and refreshments inside of Mariner High School during athletic events. MSD spent approximately \$14,254.02 to publish and distribute flyers publicizing the District's ballot measures. **(Exhibit 7)**

4.10 Muntz regularly distributes a public service newsletter entitled "Tell Me More About ...". **(Exhibit 4, p. 32)** The newsletter is directed to approximately 1,700 "opinion leaders" or citizens who have requested that they receive additional information about the operation of Mukilteo schools. The January 2000 "Tell Me More About ..." focused on the Bond & Levy proposal. **(Exhibit 8)**

4.11 MSD posted one of the Muntz flyers on its website. The flyer and, ultimately, the website contained such persuasive statements as:

With fewer teachers, class sizes will go up. With fewer custodians and maintenance workers, there will be less maintenance of facilities. With fewer teachers assistants, there will be less help for students who are struggling.

The implementation of new curriculum will be postponed, there will be less intervention for children in trouble, and school bus transportation will be reduced.

[T]he attention of maintenance will be consumed in dealing with those recurring problems – at the expense of the other facilities throughout the school district. The air quality in classrooms will suffer and the regular maintenance of buildings will decline.

(Exhibit 10)

4.12 MSD also produced a PowerPoint slide presentation that focused on the ballot measures. Debra Fulton, Executive Director of District Services, developed the presentation after the Board had already voted to place both propositions on the ballot. The PowerPoint slides were shown at a Board meeting and then used at several public meetings and posted on MSD's website. Dr. Toothaker, superintendent of the District, was questioned about the PowerPoint slides when he was interviewed under oath. Dr. Toothaker said that the "presentation was given to the Board to provide more detailed, complex information about the issues and so it was done in the spirit of educating the Board at a public meeting . . . because they enjoy quality information." Dr. Toothaker added "the public wants to have its Board members able to answer questions." **(Exhibit 5, October 24 interview - Toothaker at pp. 13-14)** Andy Muntz, Manager of District Communications and Public Relations, confirmed that the "slide presentation was done after the school board had already decided what would be included [in the propositions]. **(Exhibit 5, October 24 interview – Muntz at p. 12)** There were 55 slides in the PowerPoint presentation when it was posted on MSD's website. One of the slides included the following question and answer:

Q: *What happens if the bond fails?*

A: *Students will be less prepared for success in college and the workplace.*

(Exhibit 11, slide 42) Subsequent slides read:

The Need for Personal Safety and Asset Protection Improvements

- *Schools nationwide are increasingly targets for violent episodes*
- *Staff members have been assaulted*
- *Schools are targets for vandalism*
 - ❖ *Vandalism in February and March alone cost the District \$4,104*
 - ❖ *Staff and student vehicles have been damaged*

The Need for Parking Lot Safety and Playground Safety Upgrades

- *The safety of students being picked up and dropped off is a concern at some schools*
- *Pick-up and drop-off interferes with bus traffic*
- *Committee assessed all elementary playgrounds for compliance with Consumer Product Safety Commission (CPSC) Guidelines*
- *The \$105,000 combined with the \$62,367 the District has already invested will only meet minimum CPSC requirements*

What happens if Bond issue fails?

- *Limited camera installations*
- *No increases in parking lot lighting*
- *Already limited building maintenance dollars will be redirected to playground upgrades*
- *Storage tanks will not be abated*

(Exhibit 11, slides 45, 46)

The final slides read:

In Short!

If the Bond Issue fails, the District must fundamentally restructure the delivery of educational services to Mukilteo children, or

In Short!

The infrastructure that should support a quality learning environment for children will instead begin to negatively impact student learning

(Exhibit 11, slides 54, 55)

- 4.10. The complaint alleged that Dr. Toothaker wrote an article for the April 5 edition of the *Mukilteo Beacon*, entitled “School bonds and levy are much needed.” The response explained that Dr. Toothaker had agreed to write a series of guest editorials at the *Beacon*’s request. The response included Dr. Toothaker’s e-mail sending the article to the *Beacon* to prove that he did not suggest any headline. Rather, the headline was written by the *Beacon*’s editors without consulting Dr. Toothaker. The guest editorial written by Dr. Toothaker that appeared in the April 5 edition of the *Mukilteo Beacon* was the first of six editorials Dr. Toothaker wrote to publicize the levy. Starting with the April 5 edition and carrying through the week before the election, the *Beacon* published a Toothaker editorial each Wednesday. Each of those six editorials emphasized the necessity of successful levy and bond campaigns. **(Exhibit 12)** Dr. Toothaker used District facilities to write the editorials that appeared in the *Mukilteo Beacon*. In addition to using District-owned equipment to write and transmit the editorials, Dr. Toothaker directed District employees to assist him in writing the editorials. **(Exhibit 13, Toothaker interview – April 3, 2001, p.3)**
- 4.11. Complainant alleges that District personnel frightened the students with “horror stories” about the failure of the levy and bond measures and/or promised students new equipment or facilities if the bond measure passes. This behavior is not a violation of any statute within the jurisdiction of the Public Disclosure Commission; the allegation was not investigated.

- 4.12. Complainant alleges that Nicole McGowan, co-chair of the citizens' committee promoted the levy and bond measures in the newspaper. Complainant further alleges that the president of the Mukilteo Education Association (MEA) promoted the propositions in the local newspaper. Shirley Andrews, the president of the MEA, wrote a letter to the editor promoting the levy. Andrews, a district employee, took a leave of absence from her District position during her tenure as MEA president. Neither McGowan nor Andrews used District facilities to promote the levy and bond measures.

Respectfully submitted this 30th day of April, 2001.

Lori Anderson
Sr. Political Finance Specialist

EXHIBITS LIST

- | | |
|------------------|---|
| Exhibit 1 | Complaint letter received April 11, 2000. |
| Exhibit 2 | Flyer produced by the Mukilteo School District, "Vital Information about the Bond and Levy Propositions on the May 16 th Ballot and the future of the Mukilteo School District." |
| Exhibit 3 | Flyer produced by the Mukilteo School District, "What Will the May 16 Election Mean to Athletic Programs?" |
| Exhibit 4 | Response letter received May 1, 2000, from G. Douglas Ferguson, attorney for the Mukilteo School District. |
| Exhibit 5 | Transcript, October 24 interview of Superintendent Gary Toothaker and Andy Muntz, Manager of Communications and Public Relations Mukilteo School District, pp. 5-7, 12-14, 19-21 |
| Exhibit 6 | Mukilteo Elementary School March 31, 2000 newsletter
Mukilteo Elementary School April 7, 2000 newsletter |
| Exhibit 7 | December 22, 2000 letter from G. Douglas Ferguson to PDC staff |
| Exhibit 8 | "TELL ME MORE ABOUT ... Bond & Levy Proposal", January 2000 |

- Exhibit 9** Minutes, Mukilteo School Board meeting, March 27, 2000
Minutes, Mukilteo School Board meeting, September 27, 1999
- Exhibit 10** Printout from the Mukilteo School District website, “What if the Bond and Levy Fail”
- Exhibit 11** Printout from PowerPoint presentation developed by Debra Fulton, Executive Director of District Services, Mukilteo School District, slides 42, 45, 46, 54, and 55
- Exhibit 12** Editorials written by Dr. Gary Toothaker and published in the *Mukilteo Beacon*
- Exhibit 13** Transcript, January 3, 2001 interview of Andy Muntz
- Exhibit 14** Transcript, April 3, 2001 interview of Dr. Gary Toothaker, p. 3